

ASSEMBLY BILL

No. 242

Introduced by Assembly Member Vargas

February 7, 2005

An act to amend Sections 826, 12340.5, 12389, and 12389.1 of, and to add Sections 12389.7 and 12389.8 to, the Insurance Code, relating to underwritten title companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 242, as introduced, Vargas. Underwritten title companies: limited liability companies.

Existing law provides for the licensing and regulation of underwritten title companies, as defined, by the Insurance Commissioner. Existing law provides that only domestic stock corporations may be so licensed.

This bill would allow domestic limited liability companies to be licensed as underwritten title companies. The bill would prohibit a person from transferring or acquiring any interest in a limited liability underwritten title company without having first obtained the prior written consent of the commissioner, as specified, and would require the payment of certain fees in connection with specified ownership changes involving a company of this type.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 826 of the Insurance Code is amended
2 to read:

1 826. "Insurer" for the purposes of this article includes every
2 organization organized for the purpose of assuming the risk of
3 loss under contracts of insurance or reinsurance, and also
4 includes any of the following organizations:

- 5 (a) An admitted insurer,
- 6 (b) A nonadmitted domestic insurer,
- 7 (c) A nonadmitted foreign insurer,
- 8 (d) A nonadmitted alien insurer,
- 9 (e) An underwritten title company, or an organization
10 organized for the purpose of doing an underwritten title business,
11 *including a limited liability underwritten title company*, whether
12 licensed or not, and
- 13 (f) An attorney in fact of a reciprocal or interinsurance
14 exchange, whether it be admitted or not, or an organization
15 organized for the purpose of acting as the attorney in fact of a
16 reciprocal, or interinsurance exchange, whether the same be
17 admitted or not.

18 "Insurer" shall not include, unless specified in subdivisions (a)
19 through (f), inclusive, an organization, which though required to
20 obtain a certificate or license from the commissioner, is
21 organized or to be organized primarily for purposes other than
22 assuming the risk of loss under contracts or agreements of
23 insurance.

24 The amendments of this section by the Legislature at the 1965
25 Regular Session, except as they relate to underwritten title
26 companies, attorneys in fact, and exclusive managers, shall be
27 construed as a restatement and continuation of the law existing
28 prior to such amendment. Every permit issued by the
29 commissioner or the Commissioner of Corporations to an insurer
30 as defined in this section prior to its amendment by the
31 Legislature at 1965 Regular Session shall be valid and effective
32 for all purposes stated therein, from the date of its issuance until
33 the date of expiration stated therein.

34 Every permit issued by the commissioner under the authority
35 of former subdivision (g) of this section from the date such
36 subdivision became effective in 1965 until the effective date of
37 the amendment to this section at the 1970 Regular Session of the
38 Legislature shall be valid and effective for all purposes stated
39 therein, from the date of its issuance until the expiration date
40 specified therein.

SEC. 2. Section 12340.5 of the Insurance Code is amended to read:

12340.5. “Underwritten title company” means any corporation *or limited liability company* engaged in the business of preparing title searches, title examinations, title reports, certificates or abstracts of title upon the basis of which a title insurer writes title policies.

SEC. 3. Section 12389 of the Insurance Code is amended to read:

12389. (a) An underwritten title company as defined in Section 12340.5, which shall be a stock corporation *or limited liability company*, may engage in the business of preparing title searches, title reports, title examinations, certificates or abstracts of title, upon the basis of which a title insurer writes title policies, provided that:

(1) Only domestic corporations *and domestic limited liability companies* may be licensed under this section and no underwritten title company, as defined in Section 12340.5, shall become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth as follows:

Aggregate number of documents recorded and documents filed in the offices of the county recorders in the preceding calendar year in all counties where the company is licensed to transact business.

Number of documents	Amount of required minimum net worth
Less than 50,000	\$ 75,000
50,000 to 100,000	120,000
100,000 to 500,000	200,000
500,000 to 1,000,000	300,000
1,000,000 or more	400,000

“Net worth” is defined as the excess of assets over all liabilities and required reserves. It may carry as an asset the actual cost of

1 its title plant provided the value ascribed to that asset shall not
2 exceed the aggregate value of all other assets.

3 Where a title plant of an underwritten title company is not
4 being currently maintained, the asset value of the plant shall not
5 exceed its asset value as determined in the preceding paragraph
6 as of the date to which that plant is currently maintained, less
7 $\frac{1}{10}$ th thereof for each succeeding year or part of the succeeding
8 year that the plant is not being currently maintained. For the
9 purposes of this section, a title plant shall be deemed currently
10 maintained so long as it is used in the normal conduct of the
11 business of title insurance, and (1) the owner of the plant
12 continues regularly to obtain and index title record data to the
13 plant or to a continuation thereof in a format other than that
14 previously used, including, but not limited to, computerization of
15 the data, or (2) the owner of the plant is a participant, in an
16 arrangement for joint use of a title plant system regularly
17 maintained in any format, provided the owner is contractually
18 entitled to receive a copy of the title record data contained in the
19 jointly used title plant system during the period of the owner's
20 participation therein, either periodically or upon termination of
21 that participation, at a cost not to exceed the actual cost of
22 duplication of the title record data.

23 An underwritten title company at all times shall maintain
24 current assets of at least ten thousand dollars (\$10,000) in excess
25 of its current liabilities, as current assets and liabilities may be
26 defined pursuant to regulations made by the commissioner. In
27 making the regulations, the commissioner shall be guided by
28 generally accepted accounting principles followed by certified
29 public accountants in this state.

30 (3) An underwritten title company shall obtain from the
31 commissioner a license to transact its business. The license shall
32 not be granted until the applicant conforms to the requirements of
33 this section and all other provisions of this code specifically
34 applicable to applicant. After issuance the holder shall continue
35 to comply with the requirements as to its business set forth in this
36 code, in the applicable rules and regulations of the commissioner
37 and in the laws of this state.

38 Any underwritten title company who possesses, or is required
39 to possess, a license pursuant to this section shall be subject as if
40 an insurer to the provisions of Article 8 (commencing with

1 Section 820) of Chapter 1 of Part 2 of Division 1 of this code and
2 shall be deemed to be subject to authorization by the Insurance
3 Commissioner within the meaning of subdivision (e) of Section
4 25100 of the Corporations Code.

5 The license may be obtained by filing an application on a form
6 prescribed by the commissioner accompanied by a filing fee of
7 three hundred fifty-four dollars (\$354). The license when issued
8 shall be for an indefinite term and shall expire with the
9 termination of the existence of the holder, subject to the annual
10 renewal fee imposed under Sections 12415 and 12416.

11 An underwritten title company seeking to extend its license to
12 an additional county shall pay a two hundred seven dollar (\$207)
13 fee for each additional county, and shall furnish to the
14 commissioner evidence, at least sufficient to meet the minimum
15 net worth requirements of paragraph (2), of its financial ability to
16 expand its business operation to include the additional county or
17 counties.

18 (4) (A) An underwritten title company shall furnish an audit
19 to the commissioner on the forms provided by the commissioner
20 annually, either on a calendar year basis on or before March 31st
21 or, if approved in writing by the commissioner in respect to any
22 individual company, on a fiscal year basis on or before 90 days
23 after the end of the fiscal year. The time for furnishing any audit
24 required by this paragraph may be extended, for good cause
25 shown, on written approval of the commissioner for a period, not
26 to exceed 60 days. Failure to submit an audit on time, or within
27 the extended time that the commissioner may grant, shall be
28 grounds for an order by the commissioner to accept no new
29 business pursuant to subdivision (d). The audits shall be private,
30 except that a synopsis of the balance sheet on a form prescribed
31 by the commissioner may be made available to the public.

32 (B) The audits shall be made in accordance with generally
33 accepted auditing standards by an independent certified public
34 accountant or independent licensed public accountant whose
35 certification or license is in good standing at the time of the
36 preparation. The fee for filing the audit shall be three hundred
37 thirteen dollars (\$313).

38 (C) The commissioner may refuse to accept an audit or order a
39 new audit for any of the following reasons:

1 (i) Adverse result in any proceeding before the California
2 Board of Accountancy affecting the auditor's license.

3 (ii) The auditor has an affiliation with the underwritten title
4 company or any of its officers or directors that would prevent his
5 or her reports on the company from being reasonably objective.

6 (iii) The auditor has suffered conviction of any misdemeanor
7 or felony based on his or her activities as an accountant.

8 (iv) Judgment adverse to the auditor in any civil action finding
9 him or her guilty of fraud, deceit, or misrepresentation in the
10 practice of his or her profession.

11 Any company that fails to file any audit or other report on or
12 before the date it is due shall pay to the commissioner a penalty
13 fee of one hundred eighteen dollars (\$118) and on failure to pay
14 that or any other fee or file the audit required by this section shall
15 forfeit the privilege of accepting new business until the
16 delinquency is corrected.

17 (b) An underwritten title company may engage in the escrow
18 business and act as escrow agent provided that:

19 (1) It shall maintain record of all receipts and disbursements of
20 escrow funds.

21 (2) It shall deposit seven thousand five hundred dollars
22 (\$7,500) for each county in which it transacts business in some
23 form permitted by Section 12351 with the commissioner who
24 shall immediately make a special deposit of that amount in the
25 State Treasury and that deposit shall be subject to Sections
26 12353, 12356, 12357, and 12358 and as long as there are no
27 claims against the deposit all interest and dividends thereon shall
28 be paid to the depositor. The deposit shall be for the security and
29 protection of persons having lawful claims against the depositor
30 growing out of escrow transactions with it. The deposit shall be
31 maintained until four years after all escrows handled by the
32 depositor have been closed.

33 (A) The commissioner may release the deposits prior to the
34 passage of the four-year period upon presentation of evidence
35 satisfactory to the commissioner of either a statutory merger of
36 the depositor into a licensee or certificate holder subject to the
37 jurisdiction of the commissioner, or a valid assumption
38 agreement under which all liability of the depositor stemming
39 from escrow transactions handled by it is assumed by a licensee

1 or certificate holder subject to the jurisdiction of the
2 commissioner.

3 (B) With the foregoing exceptions, the deposit shall be
4 returned to the depositor or lawful successor in interest following
5 the four-year period, upon presentation of evidence satisfactory
6 to the commissioner that there are no claims against the deposit
7 stemming from escrow transactions handled by the depositor. If
8 the commissioner has evidence of one or more claims against the
9 depositor, and the depositor is not in conservatorship or
10 liquidation, the commissioner may interplead the deposit by
11 special endorsement to a court of competent jurisdiction for
12 distribution on the basis that claims against the depositor
13 stemming from escrow transactions handled by it have priority in
14 the distribution over other claims against the depositor.

15 (c) The commissioner shall, whenever it appears necessary,
16 examine the business and affairs of a company licensed under
17 this section. All of these examinations shall be at the expense of
18 the company.

19 (d) At any time that the commissioner determines, after notice
20 and hearing, that a company licensed under this section has
21 willfully failed to comply with any of the provisions of this
22 section, the commissioner shall make his or her order prohibiting
23 the company from conducting its business for a period of not
24 more than one year.

25 Any company violating the commissioner's order is subject to
26 seizure under Article 14 (commencing with Section 1010) of
27 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
28 may have its license revoked by the commissioner. Any person
29 aiding and abetting any company in a violation of the
30 commissioner's order is guilty of a misdemeanor.

31 The purpose of this section is to maintain the solvency of the
32 companies subject to this section and to protect the public by
33 preventing fraud and requiring fair dealing. In order to carry out
34 these purposes, the commissioner may make reasonable rules and
35 regulations to govern the conduct of its business of companies
36 subject to this section.

37 The name under which each underwritten title company is
38 licensed shall at all times be an approved name. The fee for filing
39 an application for a change of name shall be one hundred
40 eighteen dollars (\$118). Each such company shall be subject to

1 the provisions of Article 14 (commencing with Section 1010) and
2 Article 14.5 (commencing with Section 1065.1) of Chapter 1 of
3 Part 2 of Division 1.

4 The rules and regulations shall be adopted, amended or
5 repealed in accordance with the procedure provided in Chapter
6 3.5 (commencing with Section 11350) of Part 1 of Division 3 of
7 Title 2 of the Government Code.

8 SEC. 4. Section 12389.1 of the Insurance Code is amended to
9 read:

10 12389.1. Before granting a license or a reissued license to act
11 as an underwritten title company to any applicant, the
12 commissioner shall consider the qualifications of the applicant in
13 respect to the following subjects: (a) minimum net worth and
14 working capital; (b) reasonableness of its plan of operation; (c)
15 lawfulness and quality of investments; (d) financial stability; (e)
16 competency, character, and integrity of management; (f)
17 ownership and control of issued and outstanding shares *or limited*
18 *liability company membership*; (g) fairness and honesty of
19 methods of doing business; (h) method by which the applicant
20 was promoted if any of its promoters remain as stockholders or in
21 management; and (i) hazard to the public.

22 Upon consideration of all relevant qualifications, the
23 commissioner shall issue or reissue a license to act as an
24 underwritten title company to the applicant, unless the
25 commissioner shall have made a finding, or findings, that the
26 applicant is materially deficient in respect to one or more of the
27 items outlined herein.

28 SEC. 5. Section 12389.7 is added to the Insurance Code, to
29 read:

30 12389.7. (a) No person shall transfer or acquire any interest in
31 a limited liability underwritten title company without having first
32 obtained the prior written consent of the commissioner.

33 (b) Requests for consent that represent less than 10 percent of
34 the membership of the limited liability company shall be
35 approved or denied by the department within 60 days of the
36 request for consent to transfer an interest to any of the following:

37 (1) Existing members of the limited liability company.

38 (2) The underwritten title company formed as a limited liability
39 company.

1 (3) Natural persons who have been employed by the
2 underwritten title company for the preceding 12 months.

3 (c) If no action is taken by the commissioner within 60 days,
4 the application for consent shall be deemed approved. In no event
5 may the 60-day period be extended or waived by the
6 commissioner or the applicant.

7 (d) The time limits set forth in this section shall not apply if the
8 transfer results in the transferee, other than the underwritten title
9 company, owning, directly or indirectly, 10 percent or more of
10 the limited liability ownership of the underwritten title company.

11 (e) In the event that a request for consent to transfer will result
12 in a transferee owning, either directly or indirectly, 10 percent or
13 more of the limited liability ownership of the underwritten title
14 company, there shall be a filing fee of one thousand five hundred
15 dollars (\$1,500) for an application for consent to transfer.

16 SEC. 6. Section 12389.8 is added to the Insurance Code, to
17 read:

18 12389.8. In the event that an underwritten title company
19 seeks to convert from a corporation to a limited liability
20 company, the company shall apply for a reissued underwritten
21 title company license on a form prescribed by the commissioner
22 accompanied by a filing fee of two thousand five hundred dollars
23 (\$2,500).
24